

SENATE BILL 137

By Henry

AN ACT to amend Tennessee Code Annotated, Title 47,
Chapter 18, Part 1 and Title 68, Chapter 15, Part
2, relative to bedding materials.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 15, Part 2, is amended by deleting the part in its entirety.

SECTION 2. Tennessee Code Annotated, Title 47, Chapter 18, Part 1, is amended by adding the following language as a new, appropriately designated section:

§ 47-18-129.

(a) As used in this section, unless the context clearly requires otherwise:

(1) "Bedding" means any mattress, mattress pad, mattress protector pad, box spring, upholstered spring, upholstered sofa bed, quilted pad, comforter, bolster, cushion, pillow, featherbed, sleeping bag, or any other bag, case, or covering that is:

(A) Made of leather, textile, or other material;

(B) Stuffed or filled with any soft material or substance; and

(C) Designed or made for sleeping or reclining purposes, or designed or made to be an integral part of a bed or couch or other device used for sleeping or reclining purposes;

(2) "Comfort exchange policy" means a policy offered by a mattress manufacturer, wholesaler or retailer to a mattress buyer authorizing the buyer to exchange the mattress for a different firmness or for other reasons, within a certain period;

(3) "Division of consumer affairs" or "division" means the department of commerce and insurance's division of consumer affairs, created by § 47-18-5001.

(4) "Filling material" means:

(A) Hair;

(B) Down;

(C) Feathers;

(D) Wool;

(E) Cotton;

(F) Kapok;

(G) Plant fibers; or

(H) Any other soft material used in the manufacture of and the filling or stuffing of articles of bedding;

(5) "Mattress" means any quilted pad, mattress, mattress pad, bunk quilt or cushion, stuffed and filled with wool, hair or other soft material, to be used on a couch or other bed for sleeping or reclining purposes;

(6) "New" means an article of bedding or filling material that has not been previously used for any purpose; however, manufacturing processes shall not be deemed a prior use;

(7) "Secondhand" means any article of bedding or material or part of bedding or material of which prior use of any kind has been made; and an article of bedding shall be deemed to be secondhand if the article contains any previously used material in whole or in part; and

(8) "Sold" or "sale" includes any of the following activities, or any combination of them:

- (A) Sell;
- (B) Offer;
- (C) Expose for sale;
- (D) Barter;
- (E) Trade;
- (F) Lend;
- (G) Deliver;
- (H) Give away;
- (I) Rent;
- (J) Consign;
- (K) Lease;
- (L) Possess with the intent to sell; or
- (M) Dispose of in any other commercial manner.

(b) Each new article of bedding, sold in this state, must have securely and permanently attached to it a substantial white cloth tag that:

(1) Is visible on the outside covering, with the visible part being not less than six (6) square inches in size;

(2) Will not flake when abraded; and

(3) Is indelibly stamped or printed in the English language a statement or statements:

(A) Describing the kind of materials used in filling the article of bedding;

(B) Stating that the materials are new;

(C) Disclosing the name and address of the manufacturer, distributor, or vendor; and

(D) For articles of bedding containing mixtures of material from animal or fowl, indicating the percentage by weight of each kind of material contained in the article of bedding.

(c) Each article of bedding containing any secondhand material, sold in this state, must have securely and permanently attached to it the white cloth tag required by subsection (b) above as well as a securely and permanently attached substantial yellow cloth tag upon which is stamped or printed, in the same manner as required in subsection (b) above, a statement or statements:

(1) Describing the kind of materials used in filling the article of bedding;

and

(2) Indicating that the article of bedding itself is secondhand or that certain specified material contained in the bedding is second hand.

(d) Each shipment or delivery of material to be used in this state for filling articles of bedding must have conspicuously attached to the material a tag upon which is stamped or printed a statement or statements:

(1) Describing the kind of material;

(2) Stating whether the material is new or secondhand; and

(3) Disclosing the name and address of the manufacturer, distributor, or vendor.

(e) The terms used on the tag to describe filling materials shall be restricted to those defined in rules promulgated by the division of consumer affairs. A trade or substitute term may not be used, and no additional information may be contained in the statement. The description of the filling material and the statement of whether new or previously used shall be in plain type not less than one-eighth inch (1/8") in height.

(f)

(1) A person who knowingly omits or falsifies information required for inclusion on a tag required by this section commits a Class C misdemeanor punishable by a fine only. Each such deficient tag shall constitute a separate offense.

(2) A person who knowingly includes misleading information on a tag required by this section commits a Class C misdemeanor punishable by a fine only. Each such deficient tag shall constitute a separate offense.

(3) A person who knowingly sells in this state an article of bedding or item of filling material without the required tag or tags properly affixed thereto commits a Class C misdemeanor punishable by a fine only. Each such omitted tag shall constitute a separate offense.

(g) The provisions of this section do not apply to:

(1) The sale by a householder of bedding that was owned and used by the householder or the householder's family and was not acquired for the purpose of resale;

(2) The repair or renovation of any article of bedding by or for the owner for the owner's own use, or for the purpose of a casual and isolated sale by the owner; provided, however, that:

(A) The same or new material is used, or sterilized material is used and that fact is indicated on a label prescribed by the division; and

(B) The person who receives the article of bedding for repair or renovation securely and permanently attaches, at the time received, a red cloth tag on which the date of receipt and the name and address of the owner are indelibly and legibly written; or

(3) Any article of bedding sold under court order.

(h)

(1) No mattress manufacturer, wholesaler or retailer, whose sole business is the sale of mattresses, shall offer a comfort exchange policy to a mattress buyer pursuant to the sale of a mattress.

(2) A first offense for a violation of subdivision (1) is a Class C misdemeanor, punishable by a fine only of fifty dollars (\$50.00); a second offense is a Class B misdemeanor, punishable by a fine only of five hundred dollars (\$500); and a third or subsequent offense is a Class A misdemeanor, punishable by a fine only of two thousand five hundred dollars (\$2,500).

(3) Each violation of subdivision (1) shall be considered a separate offense.

(4) A violation of subdivision (1) constitutes a violation of the Tennessee Consumer Protection Act of 1977, compiled in this part. For purposes of applying the Tennessee Consumer Protection Act to subdivision (1), a violation of this subdivision (1) shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of any trade or commerce, subject to the penalties and remedies provided in such act.

SECTION 3. For purposes of rule promulgation by the division of consumer affairs, this act shall take effect upon becoming a law, the public welfare requiring it; and for all other purposes this act shall take effect July 1, 2007.